

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KENNETH WARD,

Plaintiff,

-v.-

9:07-CV-0026  
(LEK/RFT)

LUCIEN LeCLAIRE, Jr., *Acting Commissioner*;  
THOMAS G. EAGEN, *Director of Central Office*  
*Review Committee*; RICHARD SAVAGE,  
*Superintendent, Gowanda Correctional Facility*;  
J. MELENDEZ, *Deputy Superintendent of Programs*;  
LINDA JANISH, *IGP Supervisor*; BOYCE, *Sergeant*;  
R. MAHONEY, *Deputy Superintendent of*  
*Administration*; WALDMILLER, *Correctional Officer*;  
RIGGIONE, *Correctional Officer*; HESSEL,  
*Correctional Officer*; LAWRENCE SEARS,  
*Superintendent, Franklin Correctional Facility*;  
J.D. DEMARS, *Deputy Superintendent of Programs*;  
R. BOYEA, *IGP Supervisor*; GLENN GOORD, *DOCS*  
*Commissioner*; M. DUTIL, *Correctional Officer*,

Defendants.

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APPEARANCES:

KENNETH WARD  
03-B-1781  
Franklin Correctional Facility  
P.O. Box 10  
Malone, NY 12953  
Plaintiff, *pro se*

LAWRENCE E. KAHN, U. S. DISTRICT JUDGE

**DECISION AND ORDER**

Presently before the Court is a civil rights Complaint and application to proceed *in forma pauperis* brought by Plaintiff Kenneth Ward ("Plaintiff"), who is currently incarcerated at Franklin Correctional Facility. See Complaint (Dkt. No. 1); IFP Applic. (Dkt. No. 2).

In his Complaint, Plaintiff alleges, *inter alia*, that his continued exposure to secondhand smoke constitutes cruel and unusual punishment. See Complaint (Dkt. No. 1) at 1. Additionally, Plaintiff alleges that Defendants have conspired to deny Plaintiff his right to grieve his Eighth Amendment claims. Id. For a complete statement of Plaintiff's claims, reference is made to the Complaint.

After reviewing the entire file herein, the Court finds that Plaintiff's *in forma pauperis* application may be **granted**.

Plaintiff has alleged claims concerning his incarceration at Gowanda Correctional Facility and Franklin Correctional Facility. Gowanda Correctional Facility is located in Gowanda, Erie County, New York, which is located in the Western District of New York. See N.Y.S. DOCS Facility Listing *available at* <http://www.docs.state.ny.us/faclist.html> (last visited Feb. 1, 2007); 28 U.S.C. § 112(d). Therefore, this Court lacks jurisdiction over Gowanda Correctional Facility and will dismiss the Defendants whose only connection to this action originated at Gowanda Correctional Facility. Plaintiff, if he so desires, may refile his claims concerning Gowanda Correctional Facility in the Western District of New York, where jurisdiction is proper.

With respect to Plaintiff's Motion for a Preliminary Injunction (Dkt. No. 4) the Court finds that a Response to the Motion must be filed by the Office of the Attorney General of the State of New York ("Attorney General"). Therefore, the Court hereby directs the Clerk to serve a copy of the Motion for Injunctive Relief on the Attorney General by certified mail. Such Office shall thereafter file with the Court, and serve on Plaintiff, a response to such Motion within **twenty (20) days** of the date of service of process on the first Defendant to be served in this action. After the Attorney General has filed a Response to the Motion, in the manner discussed above, the Clerk shall

send the file in this matter to the Court for further review.

**WHEREFORE**, it is hereby

**ORDERED**, that Defendants **Richard Savage, J. Melendez, Linda Janish, Boyce, R. Mahoney, Waldmiller, Riggtione, and Hessel** are **DISMISSED WITHOUT PREJUDICE** as Defendants in this action; and it is further

**ORDERED**, that Plaintiff's *in forma pauperis* application (Dkt. No. 2) is **GRANTED**.<sup>1</sup> The Clerk shall issue Summonses and forward them, along with copies of the Complaint, to the United States Marshal for service upon Defendants, together with a copy of this Order. The Clerk shall forward a copy of the Summons and Complaint by mail to the Office of the New York State Attorney General, together with a copy of this Order; and it is further

**ORDERED**, that the Clerk shall provide the Superintendent of the facility designated by Plaintiff as his current location with a copy of Plaintiff's authorization form, and notify the official that this action has been filed and that Plaintiff is required to pay the entire statutory filing fee of \$350.00 pursuant to 28 U.S.C. § 1915; and it is further

**ORDERED**, that the Clerk provide a copy of Plaintiff's authorization form to the Financial Deputy of the Clerk's Office; and it is further

**ORDERED**, that the Clerk shall serve a copy of the Motion for a Preliminary Injunction (Dkt. No. 4), a copy of the Summons and Complaint, and a copy of this Order on the Attorney

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<sup>1</sup> The Plaintiff should note that although his application to proceed *in forma pauperis* has been granted, he will still be required to pay fees that he may incur in this action, including but not limited to copying and/or witness fees.

General<sup>2</sup> by **certified mail**; and it is further

**ORDERED**, that Defendants' counsel file with the Court, and serve on Plaintiff, a Response to Plaintiff's Motion within **TWENTY (20) DAYS** of the date of service of process on the first Defendant served in this action; and it is further

**ORDERED**, that after the Attorney General has filed a response to the Motion for a Preliminary Injunction in the manner discussed above, the Clerk shall forward the file in this matter to the Court for further review; and it is further

**ORDERED**, that a formal response to Plaintiff's Complaint be filed by Defendants or Defendants' counsel as provided for in the *Federal Rules of Civil Procedure* subsequent to service of process on Defendants; and it is further

**ORDERED**, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of it was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be returned, without processing.** Plaintiff must comply with requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper

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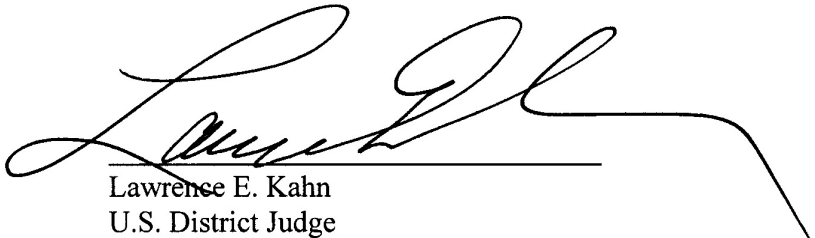
<sup>2</sup> Hon. Andrew M. Cuomo, Office of the Attorney General, State of New York, Department of Law, The Capitol, Albany, New York 12224.

allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in his address; failure to do so will result in the dismissal of this action.** All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on Plaintiff.

**IT IS SO ORDERED.**

DATED: February 05, 2007  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge